

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
February 14, 2013

Meeting called to order at 6:02 p.m.

Board Members Present: Deborah Driscoll, Tom Emerson, Susan Tuveson, Bob Melanson, Mark Alessi, Ann Grinnell, Rich Balano

Members absent:

Staff: Gerry Mylroie, Town Planner; Chris DiMatteo, Assistant Planner

Pledge to the Flag

Minutes: January 24, 2013

Ms. Driscoll noted she compared the minutes to the video and found significant omissions. **Ms. Tuveson** asked if the video becomes part of the record. **Mr. Emerson** said it does not; there could potentially be two records of what happened.

Ms. Driscoll moved to review the minutes of January 24, 2013 as Item 8.

Ms. Tuveson seconded

Motion carried unanimously by all members present

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

David Lincoln and Susan Emery - **Mr. Emerson** advised Mr. Lincoln and Ms. Emery that they could address the Board with their comments regarding the Thresher project under Item 2.

There was no further comment.

ITEM 1 – Town Capital Improvements Plan Program; Kittery Sewer Department Capital Projects.

Action: Determine with/without conditions if department's capital improvement plan is consistent with the Town's adopted Comprehensive Plan. George Kathios, Superintendent of Wastewater Services, representing the Kittery Sewer Department.

Mr. Mylroie noted Mr. Kathios was unavailable for this meeting.

Mr. Melanson moved to continue this item to include Mr. Kathios in discussions

Ms. Grinnell seconded

Ms. Grinnell asked that Council review of this item be postponed. Mr. Emerson noted a workshop on this issue was held with the Comp Plan Update Committee [ed. KCPC], Water District, and Open Space Committee. Discussion followed as to whether the proposed capital improvements are consistent with the Comprehensive Plan. Ms. Driscoll suggested a public hearing should be held for those neighborhoods that may be affected by the proposed improvements. Mr. Alesse asked if the Board could act on Phase 1 of the proposal. Discussion followed regarding proposed bonding for these improvements. Mr. Mylroie explained there are four phases to the capital improvement plan:

1. Maintenance and improvements to existing sewer lines.
2. Phase I (Business Park and Rt. 236), including an access road to the Business Park and other utility improvements, adjacent to potential future expansion down Route 236.
3. Phase II (Shapleigh neighborhood/Stevenson Road/Dana Avenue), adjacent to potential future expansion in the Rural Residential area toward Wilson Road.
4. Phase III (Martin Road), adjacent to potential future expansion toward Dennett Road.

Mr. Alesse stated it appears the proposal is consistent with the Comprehensive Plan.

Mr. Emerson reminded the Board there is a motion on the table. Mr. Melanson stated he felt the department head (Mr. Kathios) should be present for further deliberation.

Motion fails with 2 in favor; five against (Balano, Tuveson, Emerson, Driscoll, Alesse); 0 abstentions

Mr. Emerson summarized what the Board would need for conditions of approval:

1. Recommend road back-fill in the Business Park;
2. Identify back lots;
3. Encourage line under I-95 be made accessible to other utilities (gas, communications, etc.)

For the purposes of bonding, the Board could find Phase 1 in compliance, and await a decision on Phases 2 and 3 and the new comp plan implementation. Ms. Driscoll noted density changes in the Shapleigh School area is dependent upon sewer access and the Martin Road area residents need to be made aware of these proposals. Mr. Mylroie explained one of the ways in which a comprehensive plan is implemented is through capital improvement programs. If capital improvement projects are consistent with the comprehensive plan, the Planning Board works with the CIP and departments to determine those projects that take priority, and recommend to Council.

Ms. Tuveson moved to find the Kittery Sewer Department Sewer Plan/Capital Improvement Program, dated December 6, 2012 with slides dated January 2013 be approved as follows:

1. Capital Improvement projects for maintenance and upgrade for existing sewer lines are consistent with the Comprehensive Plan and should be given high priority funding.
2. Expansion Phase One – Business Park and Route 236:
 - a. Is consistent with the Comprehensive Plan and a Quality Improvement Plan for the Business Park provided the Business Park boundary is consistent with the BP Zone boundary.
 - b. Back lots along Route 236 are included in the Phase 1 via sewer easement access to the new sewer line.
 - c. The Capital Improvement Project for this phase should be given high priority as a bond.
 - d. The CIP project within the Business Park should include funding for sewer line ditch backfill that will support a future roadway in the Business Park.
 - e. Access under I-95 should be accessible by other utilities (e.g. gas and broadband suppliers) for an access fee and ongoing user lease with revenue to the Town of Kittery.

Mr. Balano seconded

Ms. Grinnell does not support item 'c' as written.

Ms. Tuveson amended her motion for item c to read: *The Capital Improvement Project for this phase should be given high priority*, and to remove *funding* from item 1.

Mr. Balano seconded

Mr. Melanson stated there is time to address all phases of the proposed projects.

Motion to amend: 6 in favor; 0 opposed; 1 abstention (Melanson)

Main motion: 6 in favor; 0 opposed; 1 abstention (Melanson)

ITEM 2 – Memorial Circle, USS Thresher Memorial Flag Pole

Action: Review and discuss recent correspondence to the Planning Board. The Thresher Memorial Project Group proposes a memorial flag located at the center of Memorial Circle in the Town of Kittery.

Mr. Emerson summarized the discussion is regarding letters from Attorney John Bonnan of Murray, Plumb and Murray, summary letter from David Lincoln, and an email from Gay Lakin regarding notice and transparency. This discussion is not about design.

David Lincoln, [Testimony Attached] noted establishing a memorial to the Thresher tragedy is important, but he takes issue with the 129-foot flagpole in the circle. The Comprehensive Plan guides the ordinance which provides the framework and the Board reviews the specifics. The State owns the area in the circle, and they have a process that must be approved by the State. The permit issued by the Town was done before the State approval was given. The memo of January 24 outlined what he felt were ordinance and comprehensive plan sections at odds with actions to date. He noted the following concerns:

1. Consider height of pole and ability to withstand winds, and are guy wires considered;
2. Consider size of the flag (15'x30') in proportion to the flagpole;
3. Cost of maintaining the structure and who will do so;
4. Is there an analysis the foundation can support the structure;
5. Lighting of flag after sunset and system of lighting, including any ordinance changes to accommodate lighting;
6. What is the town's liability if the structure should fall?

Mr. Emerson noted the structural issues are the responsibility of the CEO; there are no lighting submissions before the Board; this flagpole is only 15 feet higher than a pole in Prescott Park (NH), built in 1824 out of pine, with a 4-foot eagle on the top, with no guy-wires, and feels the safety arguments would be the same as those for the proposed Thresher flagpole.

Matt Brock, Kittery Point, addressed the process issue, not the sentiment behind the memorial. He is concerned the project has not received the review and approval required, and should receive Town Attorney opinion. He is concerned the project is going forward and prompt action is needed.

Susan Emery [Testimony Attached] summarized that the pole requires development review according to Section 16.10.1.1 where development is defined as "A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures not naturally occurring" and asked if development review was given. The allowance of a 129-foot flagpole in memorial circle does not state in the center of the circle and the removal of trees to accommodate the flagpole constitutes development, requiring Planning Board review. She requested an opinion from the Town Attorney.

Mr. Emerson explained that had a flagpole at a height as allowed by ordinance been erected anywhere in the Town, the Board would not be reviewing its installation. Individual home construction is not reviewed by the Planning Board. The development piece of the code, as written, would imply the Board would have to review a project involving removal of a tree to plant a garden.

Ms. Grinnell asked for an opinion from the Town Attorney, showing where the Board approved the ordinance amendment on July 28, 2011 as it does not appear in the minutes. **Mr. Emerson** stated he recalls the meeting and discussion where the ordinance amendments were discussed and passed as part of other ordinance amendments. **Ms. Driscoll** stated she did not want to see ordinance amendments lumped together for Board decisions in the future. **Mr. McEachern** stated it is within the purview of the Board to determine what the Board heard on July 28, 2011; whether the Board feels the flagpole is a development and whether the process was followed leading to this point. This is not something the Board can pass off, as the Board made a decision in 2011 and they are the best able to make that determination. What is the process that was or should have been followed? **Mr. Emerson** stated the there was no way the code allowed the flag pole to be installed so the code was changed to allow this to happen, including a public hearing and recommendation to Council. The way development is defined needs to be better written – signs do not come before the Board because it is a CEO decision, not a Board decision. **Ms. Tuveson** asked if the circle is Town or State property, and do we have the authority to allow this on state property?

Mr. Emerson stated it is done all the time on state owned property, such as roads. **Mr. McEachern** agreed the Board reviews all development with certain exceptions. **Mr. Emerson** reminded the Board that any additions to the circle would require site plan review and Board action. **Mr. Melanson** stated he believed moving the amendment forward on 7/28/11 was unanimous. **Mr. McEachern** stated it needs to be clear in Board motions to allow for appeals. **Mr. Emerson** explained the permit for the flagpole did not come before the Board because it was an allowed use in the code, but further changes, including landscaping, lighting, or memorials, to the site would require Board review as a site plan. **Ms. Grinnell** stated there was supposed to be a permit from the state before they received the building permit to install the flagpole. **Mr. Emerson** stated that is a CEO issue, not a Board issue. **Gary Beers, Thresher Memorial Group**, stated they contacted the MDOT and followed their directions. An email from the state of December 1, 2012 signed off with their approval, and this was provided to the CEO. At a later time, a local individual contacted Mr. Kyle Hall from the MDOT who was unaware this sign off had taken place, noted the regulatory requirements, and the MDOT was re-contacted. The MDOT issued a

license and this is forthcoming. The Committee acted in good faith and the CEO had no reason not to accept the December 1, 2012 approval. Regarding questions by Mr. Lincoln, the MDOT requires a large liability policy insuring the Town of Kittery, and the placement of the flagpole in the center of the circle was a criteria established by MDOT should it fall over, it will not impact the traveled way. Structurally, there is bedrock 4 feet down and the base construction will be a steel plate with pins driven into the bedrock, allowing it to withstand winds up to 130 mph. These are engineer-designed drawings. **Mr. Emerson** noted the Liberty pole in Portsmouth sits in Puddledock. **Ms. Driscoll** re-iterated that any further changes or additions to the Thresher Memorial Project will require a site plan application and Board review. **Mr. Mylroie** stated the applicant will be the Thresher Memorial Project Group. **Mr. Lincoln** stated he will forward an email to each Board member from Mr. Hall, MDOT regarding his approval; sketches submitted by the Thresher Memorial Group for the flagpole where the height of the pole was identified as 130 feet, a flag size of 30 feet x 60 feet, and sustained wind speeds of 88 mph. **Mr. Beers** stated the engineered specifications have been changed and submitted to the state, and the flag will be 15' x 20'.

Break

ITEM 3 – Board Member Items: Comments and Discussion

Ms. Grinnell

1. The Board asked for building permits to be submitted monthly. Ms. Driscoll asked if permits should be posted outside of the Code Office or on the web site. Mr. Emerson stated these should be provided at the first Planning Board meeting of the month.
2. The Board needs to revisit minor and major field changes, development application and review, Chapter 10, including definition of development.
3. Suggested the Board consider holding one meeting for applications and one meeting for ordinance review. Mr. Emerson suggested this could be considered as there appear to be fewer applications before the Board, but timelines for application review must be considered.
4. What is status of Adams Road and MDOT roadway design? Mr. Emerson stated MDOT will return to the Board for further presentations, but these projects are slated for 2015.

Ms. Driscoll

1. Further Kittery Foreside public space ordinance review if this is to go into the upcoming season. This is enforced by CEO.

Mr. Emerson

1. Requested workshop at the 3/14/13 meeting to discuss development definition and major/minor field changes.

No further Board member discussion.

ITEM 4 – Town Planner Items:

- A. Modification to conditions for 20 Bayview Ln./Marsilia Shoreland Development Plan;
- B. Kittery Foreside Plan – Sustain Southern Maine. Within 30 days from now another public workshop will be scheduled, followed by other meetings. **Mr. Emerson** summarized what the role of the Sustain Southern Maine initiative entails.
- C. Comprehensive Plan Update (Housing, Economy, Land Use, Transportation). **Ms. Driscoll** stated a workshop will be set to discuss the Rural Residential density issue and whether the Cluster Ordinance sufficiently addresses the Comp Plan directives. A 7:00 p.m. workshop will take place on 2/28/13 as part of the Board's scheduled meeting.
- D. Other – Economic Development Committee and Board to host a public workshop labeled "Creative Kittery" to bring together groups related to the creative economy, on Saturday morning, March 16, 2013 at the Kittery Community Center. Guest speaker is an Associate Professor at the Maine School of Art. This will be advertised and included on the web site.

NEW BUSINESS

ITEM 5 – Tucker Cove/Haley Road Pond Restoration– Wetland Alteration Plan Review.

Action: Accept or deny plan application and schedule a public hearing. Vern Gardner, owner and applicant, proposes to remove sediment and perform other maintenance associated with preventing an existing pond from filling in. Property is located at 2 Tucker Cove, Tax Map 34 Lot 5B, ±1.9 acres, in the Residential Rural (R-RL) Zone.

Vern Gardner stated he has a small, man-made pond on his property that is gradually filling in and choking out wildlife. He believes this will continue and will no longer be a wetland. He is looking for the Board's approval to remove the sediment and re-establish the wetland. This wetland meets the criteria of Article 3, Chapter 16.9.3.1 Conservation of Wetlands and 16.9.3.4.D. The DEP has reviewed the site and approves his plan. The wetland is fed by runoff. Mr. Mylroie stated this is before the Board to determine if this is a wetland alteration or a maintenance issue. If the Board determines it is an alteration, a Wetland Alteration permit is required and mitigation may be involved.

Steve Hall, Conservation Commission, stated an email [Attached] was submitted regarding the Conservation Commission's position. Whether the pond is man-made or not, a depression can function as a wetland and should be reviewed as such. The applicant references 16.9.3.4.D, but this refers to activities around a wetland, not in a wetland. He referenced the dredging of a pond near Ft. McClary, but believes this application is different. **Mr. Alesse** asked the applicant why he is before the Board now since it has been dredged before. **Mr. Emerson** noted Mr. Gardner is the Chairman of the Board of Appeals. **Mr. Balano** summarized that Mr. Gardner intends to keep the wetland as what it is and sounds like maintenance. **Mr. Gardner** explained he would dredge in the center and remove the cattails and grasses that are choking out the wetland, but does not believe he has to go down very deep. **Mr. Hall** stated the pond at Ft. McClary was not excavated, but removed the weeds by hand around the edge, not with a back-hoe as proposed by Mr. Gardner. He believes the dredging will damage the wetland as a functioning wetland. **Mr. Balano** asked if the continuous silt build up will prevent its ability to function as a wetland, or if the proposed maintenance will help. **Mr. Mylroie** asked about the email Mr. Hall referenced. **Mr. Hall** stated the email went to Mr. Emerson and Mr. Mylroie. **Ms. Driscoll** questioned what the proper way of maintaining a man-made wetland is. **Mr. Alesse** asked about the MDEP review approval. **Mr. Gardner** stated both the CEO and Mr. Copi of the MDEP has visited the site and supported his efforts. If he does not dredge and clear the area, wildlife will be affected. **Ken Markley, Easterly Survey**, suggested the Conservation Commission should endorse this proposal as you want diversity of wildlife habitat, the pond will function more efficiently if dredged. Discussion followed regarding whether a public hearing will be required and whether the Board may consider this to be a permitted activity per Title 16.9.3.4.O *Any other activity as determined by the Planning Board that does not result in a measurable alteration of the wetland* is a permitted activity within regulated wetlands. [Ms. Grinnell left the meeting at 8:30 p.m.]

Mr. Melanson moved that in accordance with Title 16.9.3.4.O, the Board finds the application does not alter, is in compliance, and approves the application.

Ms. Tuveson seconded

Motion carried unanimously by all members present

Ms. Tuveson moved that Title 16.9.3.7 *Wetlands Alteration Approval Criteria*, are not applicable to this application because of the applicability of Title 16.9.3.4.O.

Mr. Balano seconded

Motion carried unanimously by all members present

Mr. Emerson stated the Board needs to further discuss man-made and natural wetlands, specifically addressing the impact of snow removal on wetlands alongside roadways.

ITEM 6 – Lynch Lane Subdivision– Modification to an Approved Plan Review.

Action: Accept or deny plan application and schedule a public hearing. Lynch Lane Association, Inc., owner and applicant, proposes to modify the previously approved subdivision plan to allow for Street Acceptance consideration. Property is located off Bartlett Road, identified as Tax Map 68 Lot 4A, ±54.9 acres in the Residential Rural (R-RL) Zone.

Brett Costa, Lynch Lane summarized the request is to remove from the original plan the removal of the condition that the road remain a private road. The original development began as a dirt road, but the road is now a paved road and meets Town standards, with waivers granted. Before the Council can consider accepting the road as a public road, the condition on the original plan must be removed. **Mr. Mylroie** stated the action is to accept the application and hold a public hearing. Following testimony at the public hearing, the Board must decide if they will amend the original plan condition.

Mr. Melanson moved to accept the Lynch Lane Association application and schedule a public hearing
Ms. Driscoll seconded

Motion carried unanimously by all members present

Mr. Emerson noted that Mr. Costa is a member of the Board of Appeals.

ITEM 7 – Beatrice Way Subdivision – Modification to an Approved Plan Review

Action: Accept or deny plan application and schedule a public hearing. Owner Operation Blessing LP, and applicant Richard Sparkowich, propose to amend the previously approved 3-lot subdivision located between Highpoint Circle and Kittree Lane to create one additional lot. The site identified as Tax Map 61 Lot 08, ±65 acres, in the Residential - Rural (R-RL) Zone.

Ken Markley, Easterly Survey, summarized the proposal whereby the applicant wishes to amend a previously approved subdivision by adding an additional lot comprising approximately 41 acres in order to sell the acreage and build a single family home and an access drive off Kittree Lane and Highpoint Circle. There is one wetland crossing of approximately 100 feet long. Chris Copi, DEP, has recommended the installation of two, 30-inch culverts at the crossing. The proposal includes an 18-foot gravel road to the house site.

Mr. Emerson noted the ordinance has changed to make Cluster development the new standard. **Mr. Markley** stated the original subdivision was not a cluster and to design for a cluster subdivision at this time is premature, as development may not come to fruition. If they wished to further divide, they would have to appear in front of the Board with a cluster design, but the proposed use now is for a single lot. The proposed ROW is approximately 800-1000 feet. **Mr. Emerson** stated this appears to be another road to nowhere. If the Board determines this should be viewed as a cluster subdivision, the application is not complete and a public hearing cannot be scheduled. **Mr. Sparkowich**, applicant, stated the parcel is not feasible for cluster development because of wetlands and vernal pools. Could the individuals interested in purchasing the parcel stipulate there would be no further development? **Mr. Emerson** stated the ordinance requires the applicant show that a cluster development is not feasible in order to proceed with a special exception standard subdivision. Discussion followed regarding whether the intent is for a two dwelling unit on a large parcel of land or whether future division or development is envisioned. **Mr. Mylroie** suggested the applicant return with a sketch plan showing the location of the dwelling units and outline the open space and cluster calculations, etc. as required by the cluster ordinance, and include covenants restricting further development. **Mr. Markley** stated most of the work has been done as this was originally designed as a 21-lot subdivision. **Rachel Sparkowich** asked if the Board would rather see 15 houses or one house. **Mr. Emerson** explained the Board is attempting to follow the ordinance and direct the applicant accordingly.

Ms. Driscoll moved to not accept the application for the Beatrice Way Subdivision Modification of an Approved Plan, Tax Map 68 Lot 4A, due to the fact that it does not comply with current zoning.

Ms. Tuveson seconded

Motion carried unanimously by all members present

Item 8 – Minutes of January 24, 2013

Ms. Tuveson stated the Board needs to determine what becomes the record of the meeting. If it is the recorded tape, you're asking for a transcription, not minutes. What does the Board want?

Ms. Driscoll stated the Board wants accurate minutes. **Mr. Alesse** stated the Board needs to know what substantive items were omitted from the minutes.

Ms. Driscoll provided an example:

Line 234 did not reflect that Charlie Williams is a physical teacher and runs adventure parks, which gives him credibility in his offer to help the Board craft a definition for commercial recreation.

Mr. Melanson suggested Ms. Driscoll sit down with the recorder and resolve her concerns.

Mr. Balano spoke about what was missing in the minutes earlier in the meeting, and notes should be compared. What level of detail does the Board expect in the minutes?

Mr. Emerson noted the Board has to be careful not to editorialize.

Ms. Driscoll suggested members could review the tape and compare the minutes and make a determination.

Mr. Alesse stated Ms. Driscoll should review the minutes with the recorder and decide how to proceed.

Mr. Melanson moved to continue the minutes of the January 24, 2013 meeting until February 28, 2013 meeting, and that Ms. Driscoll meet with the recorder and compare notes and come up with amended minutes.

Ms. Tuveson seconded

Discussion followed as to what constitutes the record of the Board. **Mr. DiMatteo** recommended the Town Clerk weigh in on this as well. **Mr. Mylroie** explained there is a lot of discussion that can be summarized, but expert testimony, findings of fact and Board decisions do need to be recorded in the minutes. **Mr. Emerson** stated he would be willing to sit in on a discussion with Ms. Driscoll and the recorder to set guidelines and, in addition, determine what constitutes a record.

Motion carried unanimously by all members present

Mr. Balano moved to adjourn

Ms. Driscoll seconded

Motion carried unanimously by all members present.

The Kittery Planning Board meeting of February 14, 2013 adjourned at 9:31 p.m.

Submitted by Jan Fisk, Recorder – February 21, 2013

ATTACHMENTS

Maryanne Place
Interim Town Manager
Kittery, Maine

February 2, 2013

*01/29/13
Thurs 2/1/13
READ
BY D. LINCOLN
2/14/13
mjs*

Ms Place:

Would you please convey this letter to the Town Council and Planning Board, so as they consider Mr. Beers lengthy comments on the apparent conflicts of the 129 foot flagpole, they may have an alternative viewpoint.

Thanks you,

David Lincoln, Kittery

TO : Kittery Town Committees
Re: Proposed 129 foot flagpole

February 2, 2013

Committee Members:

Four guidelines assist Kittery progress : the Charter, Comprehensive Plan, ordinances and various process dictated by each. The flagpole of the Thresher Memorial , has moved forward ignoring, by-passing or abbreviated several of these guidelines. I will not dwell on these PAST ISSUES, but on what lies BEFORE the governing bodies of Kittery

The Council and the Planning Board must address the risks, both financial and legal liability, of erecting a 129 foot flagpole in the Kittery traffic circle.

*-cite
Hall
Ewell*

I do not ask that your committee reverse your vote, or revert to ignored process, or cancel permits. I ask that you consider the risk of moving forward in erecting this structure.

Consider , for a moment the height ; 129 feet . This is 41 yards. That is one half a foot ball field . **And this will be straight up in the air!!** Did you visualize that when you endorsed this erection??

Did you consider, that at the top of this pole would be United States flag which would sized commensurate with this enormous height ?

Did you wonder at the engineering problems involved in stabilizing this assembly against the winds of coastal Kittery ?? Did you consider the difficulty and cost of maintaining this assembly? Have you considered the potential of adding guy wires if and when they are needed ?

Imagine something that tall, with a bed-sheet- sized flag at the top
Imagine a 40 to 50 knot wind attacking this structure

And ask yourself...

WILL THIS STRUCTURE WITHSTAND THESE FORCES ??

I suggest that you **consider the following issues :**

- a/ **where is the data** that a flagpole this high can withstand Kittery winds?
- b/ **where is the analysis** that the foundation sub-soil is adequate?
- c/ **where is the analysis** that the proposed foundation is up to the task?
- d/ how , and who, **services a jam** in the halyards at 129 feet ?
- e/ the United States flag must be **lighted after sunset** ; with what system?
- f/ what **ordinance changes** are needed to permit lighting at night ?
- g/ if winds topple any part of the structure what is the Town's liability?

Your committee might prefer to put this issue behind you. You might agree that "fast-tracking" to meet a certain time schedule, is worth the risk. You may be willing to have these issue on the record, betting that issues of wind resistance are nothing but "sour grapes".

Would you please discuss these issues ? If you conclude that the risk is worth it.. so be it.

David Lincoln, Kittery

Susan Emery 5 School Lane, K.P.

I have read in the paper that a land use attorney ^{John Cannon} ~~for some~~ citizens of Kittery has stated that the memorial circle project requires development review because it is not just ^{by the Planning Board} insertion of a pole, but development as defined under LUDC 16.10.1.1. "Development" is defined as "A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures not naturally occurring." LUDC 16.2.2

This flagpole project does constitute a "change in land use involving alteration of the land... or vegetation." It will require not only the construction of a supporting foundation on and in the ground, but also the removal of trees.

Was an application ever filed for site plan review of the ^{Shirley Memorial} flagpole project?

I am here to request that the Planning Board get an opinion from the Town attorney to determine if he is in agreement with John Cannon that this project constitutes a development, thus requiring Site Plan

review. To my knowledge this has not happened. If it has, please tell me when. I consider clarifying this question very important, not only for this project, but for any others in the future. Although the Thresher group would deny it, it feels as if early on the public did not have ample opportunity for input into this, a very prominent private project on public land.

Finally, I also want to note that 16.8.10.9 Signs Allowed Without a Sign Permit was amended to state "A single memorial flagpole installation sponsored by private funding not exceed 129 feet in height installed on Town-owned or regulated property at Memorial Circle is allowed." This simply says at the circle, not the middle of the circle. By placing it in the middle, thus requiring (back to the Development definition) alteration of land + vegetation and addition of structures (those around the pole), in my mind, ~~it~~ this removes it from the need for a simple

building permit to a development requiring
PB review. Again Please seek an opinion
from the Town attorney.

Steve and Stella Hall

From: Eardean Wells [eardeanwells@myfairpoint.net]
Sent: Friday, February 08, 2013 1:53 PM
To: 'Anne Borden'; 'Anne M. Borden'; 'Dean Bensley'; Don Moore; 'Eardean Wells'; 'Herb Kingsbury'; 'Holly Elkins'; 'Jan Carson'; 'Steve Hall'
Subject: FW: Vern Gardner pond dredging

From: Eardean Wells [mailto:eardeanwells@myfairpoint.net]
Sent: Friday, February 08, 2013 1:53 PM
To: 'Gmylroie'; 'Tom Emerson'
Subject: Vern Gardner pond dredging

Gerry,

You requested that KCC review the Feb. 14, 2013 Planning Board meeting packet, particularly Item #5, the Vern Gardner pond dredging request.

KCC member, Steve Hall will attend this meeting (as I will be away) and speak to this item.

You also requested that I email our decision to you.

After a review of the packet material including the pictures we had a lengthy discussion – KCC member Don Moore a hydrologist, was comfortable calling this large pond a wetland whether it was man made or not. We discussed the issue that manmade ponds and drainage ditches, etc. will, after a period of time, behave like wetlands and whether we should then assume that they are wetlands. It was the consensus of the commission that this pond is a wetland because it is functioning like a wetland and therefore it falls under Kittery's Wetland Ordinance.

Eardean

*Vern "very small pond" Man made,
filling in - killing off wildlife.*